



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0921]

RIN 1625-AA09

Drawbridge Operation Regulation; Genessee River, Rochester, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is removing the existing drawbridge operation regulation for the CSX Transportation Bridge across Genessee River, mile 0.9, at Rochester, NY. The drawbridge was removed in 2013 and the operating regulation is no longer applicable or necessary.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The docket for this final rule, [USCG-2013-0921] is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this final rule.

You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC

20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Lee Soule, Bridge Management Specialist, Ninth Coast Guard District, Coast Guard; telephone 216-902-6087, e-mail [Lee.D.Soule@uscg.mil](mailto:Lee.D.Soule@uscg.mil). If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the CSX Transportation Bridge that once required draw operations in 33 CFR 117.785 was removed from the waterway in 2013. Therefore, the regulation is no longer applicable and shall be removed from publication. It is unnecessary to publish an NPRM

because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

Under 5 U.S.C. 553(d)(1), a rule that relieves a restriction is not required to provide the 30 day notice period before its effective date. This rule removes the CSX Transportation Bridge draw operation requirements under 33 CFR 117.785, thus removing a regulatory restriction on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register. The bridge was removed from the waterway in 2013 and this rule merely requires an administrative change to the Federal Register, in order to omit a regulatory requirement that is no longer applicable or necessary.

#### B. Basis and Purpose

The CSX Transportation Bridge across Genessee River, mile 0.9, was removed in 2013. It has come to the attention of the Coast Guard that the governing regulation for this drawbridge was never removed subsequent to the removal of the drawbridge. The elimination of this drawbridge necessitates the removal of the drawbridge operation regulation found in 33 CFR 117.785, that pertains to the former drawbridge.

The purpose of this rule is to remove the section of 33 CFR 117.785 that refers to the CSX Transportation Bridge at mile 0.9 from the Code of Federal Regulations since it governs a bridge that has been removed from the waterway.

#### C. Discussion of Rule

The Coast Guard is revising the regulation in 33 CFR 117.785 by removing restrictions and the regulatory burden related to the draw operations for this bridge that is no longer in existence. The change removes the section of the regulation governing the CSX Transportation Bridge since the bridge has been removed from the waterway. This Final Rule seeks to update the Code of Federal Regulations by removing language that governs the operation of the CSX Transportation Bridge, which in fact no longer exists. This change does not affect waterway or land traffic. This change does not affect nor does it alter the operating schedules in 33 CFR 117.785 that govern the remaining active drawbridge on the Genessee River.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard does not consider this rule to be "significant" under that order because it is an administrative change and does not affect the way vessels operate on the waterway.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will have no effect on small entities since

this drawbridge has been removed and the regulation governing draw operations for this bridge is no longer applicable. There is no new restriction or regulation being imposed by this rule; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

### 3. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### 4. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### 5. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received

without jeopardizing the safety or security of people, places or vessels.

#### 6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 7. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and

Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 11. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 12. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this



action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an administrative change to remove an existing drawbridge regulation for a drawbridge that has been removed from the waterway. This rule is categorically excluded, under figure 2-1, paragraph (32) (e), of the Instruction.

Under figure 2-1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.785 to read as follows:

§117.785 Genessee River.

The draw of the Colonel Patrick Henry O'Rourke Memorial Bridge, mile 1.2 at Rochester, shall open on signal from April 1 through December 15; however, from 7 a.m. to 9 a.m. and from

4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need be opened only for the passage of commercial vessels. From 9 a.m. to 4 p.m. and 6 p.m. to 11 p.m., Monday through Friday, except Federal holidays, and from 7 a.m. to 11 p.m. on Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour and half-hour, except that commercial vessels shall be passed at any time. From December 16 through March 31, the draw shall open on signal if at least 12 hours notice is given. The owners of the bridge shall maintain clearance gauges in accordance with 33 CFR 118.160.

Dated: November 16, 2013

F. M. MIDGETTE

Rear Admiral, U. S. Coast Guard

Commander, Ninth Coast Guard District

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